

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 549 CS                      Offense of Sexual Battery on a Minor  
**SPONSOR(S):** Greenstein; Kravitz; Porth  
**TIED BILLS:** None                      **IDEN./SIM. BILLS:** SB 188

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	6 Y, 0 N, w/CS	Bond	Kramer
2) Civil Justice Committee		Billmeier	Billmeier
3) Justice Council			
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

A statute of limitations is an absolute bar to the filing of a legal case after a date set by law. This bill tolls (extends) civil and criminal statutes of limitation applicable to cases involving sexual battery where the victim was a minor. Such statutes of limitation are tolled during any period of time where a licensed medical or mental health practitioner determines that the victim should not yet disclose the incident outside of a clinical setting, confront the perpetrator, or publicly disclose the incident.

This bill does not appear to have a fiscal impact on state or local government.

This bill takes effect July 1, 2005.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Personal Responsibility -- This bill gives victims of criminal acts the ability to delay confronting the perpetrator until such time as a medical professional determines that the victim should confront the perpetrator.

#### B. EFFECT OF PROPOSED CHANGES:

A statute of limitations is an absolute bar to the filing of a legal case after a date set by law. The date is commonly based on the time that has elapsed since the action giving rise to the case occurred. Such laws creating statutes of limitation specify when the time period begins, how long the limitations period runs, and circumstances by which the running of the statutes may be tolled (suspended). Alternatively, some laws creating statutes of limitations set the limitations period based on the age of the victim. Combinations of these two approaches exist.

State and federal constitutions prohibit ex post facto laws.<sup>1</sup> Accordingly, a tolling of a statute of limitations only delays the conclusion of the limitations period. Thus, if the limitations period on a case has already expired, the tolling created by this bill will not serve to revive the action.<sup>2</sup>

#### **Limitations of Actions in Civil Cases, as Applied to Sexual Battery Upon a Minor**

Chapter 95, F.S., governs the statute of limitations for civil actions. In general, the statute of limitations begins when "the last element constituting the cause of action occurs."<sup>3</sup>

A tort is a private or civil wrong or injury for which a court will provide a remedy in the form of an action for damages. An intentional tort is a tort or wrong perpetrated by one who intends to do that which the law has declared wrong.

In general, the statute of limitations for most torts, including those related to sexual assault, is 4 years from the date of injury.<sup>4</sup> However, the limitations period for an intentional tort committed on or after April 8, 1992, and based on abuse of a minor<sup>5</sup> (including sexual abuse) is the later of:

- The victim's 25th birthday.<sup>6</sup>
- 4 years after the injured person is no longer dependent upon the abuser.
- 4 years from the time of discovery of both the injury, and the causal relationship between the injury and the abuse.

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<sup>1</sup> Article I, s. 10, U.S.Const.; Article I, s. 10, Fla.Const.

<sup>2</sup> In Stogner v. California, 539 U.S. 607 (2003), the United States Supreme Court held that a law enacted after the expiration of a previously applicable statute of limitations had expired could not, under the ex post facto clause of the United States Constitution, revive the time-barred prosecution.

<sup>3</sup> Section 95.031(1), F.S.

<sup>4</sup> Sections 95.11(3)(o), F.S.

<sup>5</sup> Abuse, for purposes of this subsection, is defined by reference to these other statutes. In ss. 39.01 and s. 984.03, F.S., abuse is any willful act or threatened act that results in any physical, mental, or sexual injury or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. In s. 415.102, F.S., abuse is any willful act or threatened act by a caregiver that causes or is likely to cause significant impairment to a vulnerable adult's physical, mental, or emotional health. Incest, defined in s. 826.04, F.S., is also listed as a type of abuse.

<sup>6</sup> Technically, the statute reads that the statute of limitations is "7 years after the age of majority." In the rare case where a minor has petitioned for and been granted judicial emancipation prior to age 18, this portion of the statute of limitations could then expire prior to the 25th birthday.

For intentional torts committed before April 8, 1992, where the victim suffers from traumatic amnesia, the 4 year limitations period does not begin to run until the date that the amnesia ends and the victim thereby recalls the incident of abuse. *Hearndon v. Graham*, 767 So.2d 1179 (Fla. 2000) (adopting the “delayed discovery doctrine” to sexual assaults that occurred before April 8, 1992).

### **Criminal Statutes of Limitation Applicable to Sexual Battery**

Section 794.011, F.S., specifies numerous crimes related to sexual battery, commonly referred to as rape.<sup>7</sup> Section 775.15, F.S., sets forth the statutes of limitation applicable to criminal prosecutions. Section 775.15(4), F.S., provides that the time for prosecution of a criminal case starts to run on the day after the offense is committed. An offense is deemed to have been committed either when every element of the offense has occurred, or, if the legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant’s duplicity therein is terminated.

Under current law, there is no statute of limitations for most sexual battery crimes where the victim is a minor. Only two sexual battery offenses where the victim is a minor have an applicable statute of limitations under current law. As to these two offenses, the applicable statute of limitations does not commence until the earlier of the date that the minor reaches 18 years of age or the crime is reported to law enforcement.<sup>8</sup>

- A person who commits sexual battery upon a person 12 years of age or older, without that person’s consent, and in the process thereof does not use physical force and violence likely to cause serious personal injury commits a felony of the second degree.<sup>9</sup> There is no statute of limitations for this crime if the sexual battery was reported to law enforcement within 72 hours after the commission of the crime.<sup>10</sup> or if there were multiple perpetrators.<sup>11</sup> Otherwise, the statute of limitations is 3 years. Because the statute of limitations must commence on or before the victim’s 18th birthday, the limitations period would not extend beyond the victim’s 21st birthday.
- Without regard to the willingness or consent of the victim, a person who is in a position of familial or custodial authority to a person less than 18 years of age and who solicits that person to engage in any act which would constitute sexual battery commits a felony of the third degree.<sup>12</sup> The statute of limitations is 3 years. Because the statute of limitations must commence on or before the victim’s 18th birthday, the limitations period would not extend beyond the victim’s 21st birthday.

In addition to the time periods stated above, an offender may be prosecuted within 1 year after the date on which the identity of the offender is established, or should have been established by the exercise of due diligence, through the analysis of deoxyribonucleic acid (DNA) evidence, if a sufficient portion of the evidence collected at the time of the original investigation and tested for DNA is preserved and available for testing by the accused.<sup>13</sup>

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<sup>7</sup> Section 794.011(1)(h), F.S., defines sexual battery as “oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.”

<sup>8</sup> Section 775.15(7)(a), F.S.

<sup>9</sup> Section 794.011(5), F.S.

<sup>10</sup> Section 775.15(1)(b), F.S.

<sup>11</sup> If there were multiple perpetrators, this crime is reclassified as a first degree felony, s. 794.023(2)(a), F.S., and accordingly there would be no statute of limitations.

<sup>12</sup> Section 794.011(8)(a), F.S.

<sup>13</sup> Section 775.15(8), F.S.

## **Effect of Bill - Civil Causes of Action**

This bill amends s. 95.11, F.S., to provide that the statute of limitations for a civil action based on an act upon a victim younger than 18 years of age related to sexual battery as defined in s. 794.011, F.S., is tolled until the victim becomes 18 years of age or during any period of time in which it is determined by a medical practitioner licensed under chapter 458, F.S. or under chapter 459, F.S., a licensed psychotherapist under chapter 491, F.S., or a licensed psychologist under chapter 490, F.S., that:

- The victim should not yet disclose information concerning the incident from which the action arises outside a clinical setting;
- The victim should not yet confront the alleged perpetrator of the act; or
- The victim should not yet publicly disclose the incident from which the action arises.

## **Effect of Bill - Criminal Cases**

This bill amends the statute of limitations applicable to criminal cases, s. 775.15, F.S., to provide that, if the victim of a criminal sexual battery is under the age of 18 at the time of the offense, the limitations is tolled until the 18th birthday, and is further tolled during any period of time in which it is determined by a medical practitioner licensed under chapter 458, F.S. or under chapter 459, F.S., a licensed psychotherapist under chapter 491, F.S., or a licensed psychologist under chapter 490, F.S., that:

- The victim should not yet disclose information concerning the incident from which the action arises outside a clinical setting;
- The victim should not yet confront the alleged perpetrator of the act; or
- The victim should not yet publicly disclose the incident from which the action arises.

This change applies to any such offense except one already time-barred on or before July 1, 2005. This provision makes the change retroactive to previously committed offenses, provided that the statute of limitations did not run out of time prior to July 1, 2005.

### **C. SECTION DIRECTORY:**

Section 1 amends s. 95.11, F.S., regarding the statute of limitations for civil actions.

Section 2 amends s. 775.15, F.S., regarding the statute of limitations for criminal cases.

Section 3 provides an effective date of July 1, 2005.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Any estimate of the fiscal impact of this bill would be speculative.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

The statute of limitations in effect at the time the crime is committed controls. *State v. Wadsworth*, 293 So.2d 345 (Fla. 1974). However, the legislature can amend statutes of limitation to apply retroactively without running afoul of the constitutional ex post facto prohibition if it does so before prosecution is barred by the old statute, and clearly indicates that the new statute is to apply retroactively to cases pending when it becomes effective. *Scharfschwerdt v. Kanarek*, 553 So.2d 218, 220 (Fla. 4th DCA 1989) (recognizing extended statute of limitations regarding lewd and lascivious assault upon a child, and sexual battery); *Reino v. State*, 352 So.2d 853 (Fla. 1977) (quoting *United States v. Richardson*, 512 F.2d 105 (3rd Cir.1975)), receded from on other grounds, *Perez v. State*, 545 So.2d 1357 (Fla. 1989).

The bill appears to express an intent that it apply retroactively to cases pending on the effective date.

A prosecution pursuant to this bill may raise due process concerns if there is a long delay between the commission of the crime and the prosecution of the case. In *United States v. Lovasco*, 431 U.S. 783, 789 (1977), the United States Supreme Court explained that criminal statutes of limitations provide the “primary guarantee” against bringing “stale” criminal charges and said that the Due Process Clause has a “limited role” in protecting against oppressive delay. The court said that it could “not determine in the abstract the circumstances in which preaccusation delay would require dismissing prosecutions.”<sup>14</sup> In considering whether a delay violates due process, other states have considered factors such as the length of the delay, the prejudice to the accused, and the reason for the delay. See *State v. Gray*, 917 S.W. 668 (Tenn. 1996)(holding a 42 year delay between commission of a sex crime and prosecution violated the due process clause).

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 23, 2005, the Criminal Justice Committee adopted one amendment to this bill. The amendment changed from a general reference to mental health professionals to a reference to mental health professionals licensed under specific laws. The amendment also removed language referring to “medically inadvisable” and

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<sup>14</sup> *Lovasco*, 431 U.S. at 796.

replaces it with a reference to the victim “should not yet” disclose the incident, confront the perpetrator, or publicly disclose the incident. The bill was then reported favorably with a committee substitute.